

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In re:	)	
	)	
Kevin M. Sykes dba Setkys Holdings, LLC,	)	CHAPTER 7
	)	
Debtor	)	CASE NO. 05-91141-JB
<hr/>		
Washington Mutual as Servicing Agent for	)	
Federal National Mortgage Association	)	
Movant	)	
v.	)	CONTESTED MATTER
Kevin M. Sykes dba Setkys Holdings, LLC,	)	
Debtor	)	CHIEF JUDGE: JOYCE BIHARY
Robert B. Silliman ,	)	
Trustee	)	
Respondent	)	

**NOTICE OF ASSIGNMENT OF HEARING**

NOTICE IS HEREBY GIVEN THAT a Motion for Relief From the Automatic Stay has been filed in the above-styled case. In the event a hearing cannot be held within thirty (30) days from the filing of the Motion for Relief From the Automatic Stay as required by 11 U.S.C. §362, Movant waives this requirement and agrees to the next earliest possible date, as evidenced by signature below. **The undersigned consents to the automatic (and any related co-debtor stay) remaining in effect with respect to Movant until the court orders otherwise.**

**A hearing will be held on the 12<sup>th</sup> day of July 2005, at 9:30 a.m. in Courtroom 1402, United States Courthouse, 75 Spring Street, SW, Atlanta, GA.**

Within three days of the date of this notice, Movant's attorney, or a pro se Movant, shall serve the motion and this notice upon the debtor, trustee, and their attorneys or record, and shall file a certificate of service within three days of service. BLR 9007-2 NDGa.

DATED: June 13, 2005

\_\_\_\_\_/s/\_\_\_\_\_  
Richard B. Maner, GBN 486588  
Attorney for Movant  
780 Johnson Ferry Road  
Suite 200  
Atlanta, GA 30342  
404-851-9200 Phone  
404-851-9811 Fax

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
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Robert B. Silliman ,	)	
Trustee	)	
Respondent	)	

**MOTION FOR RELIEF FROM STAY**

COMES NOW, **Washington Mutual as Servicing Agent for Federal National Mortgage Association**, (the "Movant") and moves this Court for relief from the automatic stay pursuant to 11 U.S.C. §362. In support thereof, Movant shows the Court as follows:

1.

The Movant is the holder of a Deed to Secure Debt ("Security Deed") which describes certain real property purportedly owned by Debtor located at **1267 Tiverson Place, Lawrenceville, GA 30043**. Said real property is security for a promissory note held by Movant.

2.

The Debtor filed this Chapter 7 case on **2/23/2005**.

3.

The Debtor is contractually due for **April 1, 2005** and is in arrears in excess of **\$5,347.32**.

4.

The approximate total payoff is **\$196,255.30** as of the filing of this motion, as well as all other charges specified in the loan documents held by Movant and by applicable law.

5.

The Debtor's indicated market value is unknown as of the filing of this Motion.

6.

Because Debtor has demonstrated a continuing default, and the clear inability to make payments required by the loan documents and the provisions of the bankruptcy code, Movant is not adequately protected. For the above and foregoing reasons, Movant asserts cause exists sufficient to waive the requirements of Bankruptcy Rule 4001(a)(3), therefore allowing an Order to be effective upon this Honorable Court's signature.

7.

Because the Security Deed provides that the Debtor is responsible for Movant's attorney's fees in pursuing legal action such as this, Movant is entitled to reasonable attorney's fees from the Debtor to be assessed against its secured property described located at **1267 Tiverson Place, Lawrenceville, GA 30043**, under 11 U.S.C. §506(b) (unless it is shown clearly that there is no equity in the security property.)

WHEREFORE, the Movant prays for an Order relieving it from the provisions of the bankruptcy stay and authorizing it to proceed with the exercise of its private power of sale and foreclosure under its Deed to Secure Debt, any dispossessory proceedings if necessary all in accordance with and pursuant to appropriate state statutes, for reasonable attorney's fees under 11 USC §506(b).

Respectfully submitted,  
HUDNALL, COHN & ABRAMS, P.C.

\_\_\_\_\_/s/\_\_\_\_\_  
Richard B. Maner, GBN 486588  
Attorneys for Movant  
780 Johnson Ferry  
Suite 200  
Atlanta, GA 30342  
404-851-9200 Phone  
404-851-9811 Fax

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Return To:

HomeBanc Mortgage Corporation  
ATTN: Final Documents  
PO Box 105830  
Atlanta, GA 30348-5830

FILED & RECORDED  
CLERK SUPERIOR COURT  
GWINNETT COUNTY, GA.

2001 MAY -1 AM 8:00

TOM LAWLER, CLERK

Prepared By:

HomeBanc Mortgage Corporation  
5775-R Glenridge Dr.  
Suite 500  
Atlanta, GA 30328

GEORGIA INTANGIBLE TAX PAID

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TOM LAWLER  
SUPERIOR COURT GWINNETT  
COUNTY, GEORGIA

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SECURITY DEED

LOAN # 0021440656  
SVC #  
INV #

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 27 2001, together with all Riders to this document.

(B) "Borrower" is  
Kevin M. Syken,

Borrower is the grantor under this Security Instrument.

(C) "Lender" is HomeBanc Mortgage Corporation

Lender is a Corporation  
organized and existing under the laws of The State of Delaware

GEORGIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3011 1/01

UVP-6(QA) (0001)  
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UVP MORTGAGE FORMS - (BOOK) 1-291

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LOAN # 0021440656

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Lender's address is 5775-E Glenridge Dr. Suite 500  
Atlanta, GA 30328

Lender is the grantee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated April 27 2001.  
The Note states that Borrower owes Lender Two Hundred One Thousand Four Hundred and no/100----- Dollars

(U.S. \$ 201,400.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 1 2031.

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input checked="" type="checkbox"/> Other(s) [specify] *

\*Waiver of Borrower's Rights and the Closing Attorney's Affidavit

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

6(GA) 10005

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LOAN # 0021440656

BK 22988 PG 0008

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender; (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the County of Gwinnett, Georgia:

[Type of Recording Jurisdiction] of [Name of Recording Jurisdiction]

See Exhibit "A" attached hereto and made a part hereof by this reference.

Parcel ID Number: N/A  
1267 Tiverton Place  
Lawrenceville  
("Property Address"):

which currently has the address of  
[Street]  
[City], Georgia 30043 [Zip Code]

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S.

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Form 3011 1/01

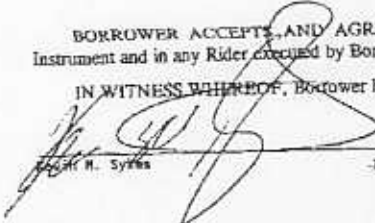
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LOAN # 0021440656

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BORROWER ACCEPTS AND AGREES to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

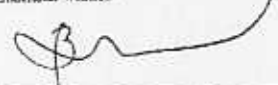
IN WITNESS WHEREOF, Borrower has signed and sealed this Security Instrument.

 (Seal)  
Robert H. Sykes -Borrower (Seal)  
-Borrower  
  
\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower  
  
\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower  
  
\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

STATE OF GEORGIA,  
Signed, sealed and delivered in the presence of:

County ss:

  
Unofficial Witness

  
Notary Public,  
State of Georgia

County

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EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 50, 7th District, Gwinnett County, Georgia, being Lot 215, Block B, Unit I, Rivershyre, as per plat recorded in Plat Book 52, Page 36, Gwinnett County Records, which plat is incorporated herein and made a part hereof by reference; being improved property known as 1267 Tiverton Place, according to the present system of numbering houses in said county; as more particularly shown on that certain plat of survey prepared by Carter Land Surveying Co., dated December 20, 1989.

A handwritten signature, possibly reading "Kau", is written in the lower right quadrant of the page.

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of Movant's **MOTION FOR RELIEF FROM STAY AND NOTICE OF HEARING** by depositing same in the United States Mail in a properly addressed envelope to each with adequate postage thereon as follows:

Kevin M. Sykes dba Setkys Holdings, LLC  
1267 Tiverson Place  
Lawrenceville, GA 30043-

Glenn E. Cooper  
5865 Jimmy Carter Blvd.  
Suite #110  
Norcross, GA 30071

Robert B. Silliman, Esq.  
Chapter 7 Trustee  
PO Box 997  
Marietta, GA 30061-

This the 13-Jun-05.

\_\_\_\_\_/s/\_\_\_\_\_  
Richard B. Maner, GA Bar No 486588  
Attorney for Movant  
780 Johnson Ferry Road  
Suite 200  
Atlanta, GA 30342  
404-851-9200 Phone  
404-851-9811 Fax